

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of Appeal of:

FAMILY FIRST RESIDENTIAL
West Covina, California

v.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Regional Center.

OAH No. 2012120730

PROPOSED DECISION

Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, State of California, conducted a review of the above-captioned matter pursuant to California Code of Regulations, title 17, sections 56061, subdivision (a)(1), and 56065.

Anthony Stallworth, Administrator, filed an appeal on behalf of Family First Residential Facility (facility), which was received by the Department of Developmental Services on December 4, 2012. The matter was referred to the Office of Administrative Hearings, which received the appeal on December 6, 2012. The parties were sent an acknowledgement of the appeal and request for documentation and the appeal file on February 15, 2013. The appeal file was received from the San Gabriel/Pomona Regional Center (SGPRC) on February 21, 2013. On February 26, 2013, Anthony Stallworth filed a letter dated February 25, 2013, with attachments for inclusion in the record on appeal. The matter was thereafter submitted for written review.

PROCEDURAL BACKGROUND

SGPRC issued a Corrective Action Plan (CAP) to the facility on August 14, 2012, following a meeting with representatives from the facility, and a review of documents (staff timesheets) obtained from the facility on July 24, 2012. The CAP was based on SGPRC's determination that the facility's failure to meet requirements for additional staffing hours constituted a Substantial Inadequacy pursuant to California Code of Regulations, title 17, section 56054, subdivision (a)(2). On September 10, 2012, the facility filed a written appeal of the issuance of the CAP. A hearing was held by SGPRC on October 4, 2012. In a letter dated

November 14, 2012, R. Keith Penman, Executive Director, SGPRC, upheld the action taken by SGPRC personnel. More specifically, Mr. Penman determined that, with the exception of the week of July 16, 2012, the facility failed to provide required staffing hours for the three months in question. This appeal followed on December 4, 2012.

ISSUE RAISED ON APPEAL

Whether the facility provided fewer direct care staff hours than that required.

EVIDENCE CONSIDERED

The review considered the following documents:

1. The facility's November 27, 2012 letter of appeal to the Director, Department of Developmental Services, and enclosures.
2. SGPRC's Appeal File, including:
 - a. SGPRC response to appeal dated February 19, 2013 with attached timesheets.
 - b. December 5, 2012 letter from Diana Nicolaou.
 - c. November 14, 2012 Decision by R. Keith Penman.
 - d. Documents from Family First related to first level appeal.
 - e. October 5, 2012 letter from Lucina Galarza.
 - f. Facility timesheets collected on July 24, 2012.
 - g. August 13, 2012 letter from Armando Ortiz and CAP.
 - h. Facility's September 25, 2012 request for fair hearing and supporting documents.
3. Facility's February 25, 2013 letter appeal with supporting documentation.
4. Office of Administrative Hearings Acknowledgment of Appeal and Request for Documentation and Appeal File.¹

FACTUAL FINDINGS

1. On July 24, 2012, SGPRC conducted an unannounced semi-annual monitoring review at the facility. Upon arrival, there was only one staff person, Benjamin Melendez, on

¹ Many of the documents in the appeal file submitted by SGPRC were duplicative of the enclosures to the facility's appeal letter to the Director, Department of Developmental Services.

duty. Co-licensees Ramiro and Donna Romero subsequently arrived and designated themselves as the second and third staff on duty. As part of the visit, staff timesheets were collected and reviewed. The facility is a Level 4G facility with four residents. Anthony Stallworth is the administrator of the facility.

2. On August 13, 2012, SGPRC imposed a CAP on the facility. It cited the facility for substantial inadequacy related to insufficient staff hours. Specific reference was made to section 56054, subdivision (a)(2), provision of fewer direct care staff hours than are required by the facility's approved service level. SGPRC made the following determinations at that time:

A review of the time sheets for the week beginning May 7, 2012 noted that only 34.5 additional staff hours were provided instead of the required 96 hours. This is a shortage of 61.5 hours. In addition, there was no documentation of anyone working the nocturnal shift for this particular week. For the week of July 16, 2012, the review of timesheets for this period noted that only 32.5 additional hours were provided instead of the 96 required hours. This is a shortage of 63.5 hours. In addition, there was no documentation of anyone working the nocturnal shift for this particular week. Title 17, Section 56004 requires that a Level 4G facility with four (4) residents provide 96 additional staff hours. In addition to the shortage of additional staff hours, there was no documentation to support the 26 hours of 1:1 services funded for a client of Frank D. Lanterman Regional Center.

3. In addition to the above determinations, SGPRC noted that lack of documentation made it impossible to determine the hours that Mr. Romero worked for the months of May, June and July 2012. SGPRC was also concerned that Mr. Romero was working excess hours. For example, in April 2012, SGPRC noted that Mr. Romero reportedly worked at least 80 hours a week.

4. On September 10, 2012, the facility filed an appeal. At that time, Mr. Stallworth contended as follows: "Family First Residential has never performed less hours than required, on any week, since this writer has performed Administrator duties. The licensees have been the backbone of the program, the residents lives have been markedly improved, and we have worked closely with SGPRC's staff to ensure that expectations have been met. We have had some documentation challenges, of which have been corrected, and we are looking forward to continuing to provide the best services available to the individuals entrusted to our care."

5. Following the first-level hearing on October 4, 2012, the CAP determinations, with one exception, were upheld. SGPRC Executive Director R. Keith Penman, in his

capacity as hearing officer, determined that additional documents and timesheets submitted for Ramiro Romero showed that for the week of July 16, 2012, “additional hours needed for your level 4G facility were met.” However, Mr. Penman sustained the remainder of CAP determinations, noting as follows:

However, for the week of May 7, 2012, staffing was still short 7.5 hours. We also did not locate any documentation allowing you to use 16 weekly hours of Program Preparation Hours, thus requiring you to provide the required 96 additional weekly hours of staffing. Therefore, staffing was only met for one of the weeks in question.

In addition to this continued issue, there are still other staffing concerns that are apparent. Firstly, there continues to be a shortage of 1:1 hours for the weeks of May 7, 2012 and July 16, 2012. For the week of May 2012, you were short 36 hours, and for the week of July [sic] 2012, you were short 31.5 hours. In addition, the time sheets for Ramiro Romero note that he is working an exorbitant number of hours. For the week beginning May 7, 2012, Mr. Romero worked 131 hours, and for the week beginning July 16, 2012, he worked 124 hours. Timecards for May, June and July 2012 also note that Mr. Romero was working every day, an average of 18 hours. There were also two days where he worked over 24 consecutive hours.

Family First Residential Facility’s Issues on Appeal

6. Three issues have been identified in this appeal by the facility to the Director of the Department of Developmental Services. First, the facility has suggested that any deficiencies in required staff service hours were attributable to failures to document actual hours worked by Mr. Romero, and not to any actual failure in providing the required staff service hours. Second, the facility contends that it was not properly credited for program preparation hours which it believes should have counted toward the required 96 additional weekly hours of staffing. And third, the facility notes that because there are no industry limits imposed regarding daily working hours, concerns relating to the number of hours worked by Mr. Romero are unfounded. These matters are discussed in same order below.

7. Documentation. SGPRC reasonably relied upon documentation provided by the facility in making its determination regarding substantial inadequacy. SGPRC reviewed timesheets that were provided to it at the time of the July 24, 2012 monitoring visit. The facility provided additional documentation at the time of the first level hearing. Review of these additional documents resulted in an adjustment to CAP findings regarding the week of July 16, 2012. In all other respects, however, the facility provided no documentation to

correct CAP findings regarding required staff service hours for the months of May, June and July 2012. The facility's assertion that all required staff service hours were provided over this period, in the absence of supporting documentation and/or time sheets, is no defense to the CAP findings regarding substantial inadequacy in providing required staff service hours.

8. Program Preparation Hours. The facility contends that it was not properly credited with program preparation hours, and that allowance for such hours would have helped it meet its required staffing hours. For a service level 4G facility, program preparation hours up to four hours per consumer per week may be included within the total number of additional direct care staff hours. (Cal. Code Regs., tit. 17, § 56004, subd. (e).) However, the facility never made request to use program preparation hours at the time that it submitted its Program Design. When SGPRC and the facility entered into a contract for services, staffing schedules were submitted as part of the Program Design. SGPRC explained that the use of program preparation hours is permissible, but would need to be specified in the Program Design, as well as in staffing schedules that are submitted as part of the Program Design. This was not done here. Rather, the schedule for four facility clients, as described in the Program Design, identifies 96 additional hours, without using program preparation hours. SGPRC noted that vendors are required to provide an explanation as to how program preparation hours were to be used, and that this was not done in the facility's Program Design. SGPRC did approve the use of program preparation hours *after* development of the CAP in this case. The facility cannot now raise this matter by way of defense to the original CAP. SGPRC has further suggested that the facility failed to raise this issue at either the CAP conference, or at the first level appeal.

9. Daily Working Hours. The facility submitted an Industrial Welfare Commission Order (No. 5-2001) in support of its contention that Mr. Romero was not working an exorbitant number of hours. The facility contends that because there are no limits imposed regarding daily working hours for those employed in the housekeeping industry, the Romeros were properly "working hard to support the individuals in their care, as well as improve their quality of life." Without commenting upon the Industrial Welfare Commission Order, it appears that SGPRC's concern had more to do with client safety occasioned by Mr. Romero working so many hours, than any violation of laws governing working hours. Mr. Romero averaged 18 hours per day over the three months reviewed. There were two days when he worked over 24 consecutive hours. SGPRC expressed concerns related to the excessive number of hours worked by Mr. Romero. Working such hours could lead to fatigue impacting job performance, and consequent client safety issues. SGPRC's concerns were reasonable under these circumstances.

10. When all the documents in the record are considered, the facility has not established grounds for its appeal. The SGPRC executive director reasonably determined that, with the exception of the week of July 16, 2012, the CAP findings of substantial inadequacy regarding facility staffing should be sustained. SGPRC's decision on second level appeal should be upheld, and the facility's appeal should be dismissed.

LEGAL CONCLUSIONS

1. California Code of Regulations, title 17, section 56056, subdivision (a)(1) , provides that “the regional center and the administrator shall meet to develop a written corrective plan (CAP) within 10 working days of the identification and verification of a substantial inadequacy.”

2. California Code of Regulations, title 17, section 56054, defines substantial inadequacies and reads, in pertinent part:

(a) Substantial inadequacies are the following:

[¶] ... [¶]

(2) Provision of fewer direct care staff hours than are required by the facility’s approved service level;

3. A review of the record established that the facility provided fewer direct care staff hours than were required by the facility’s approved Level 4G service level. Such constituted a factual basis for issuing the Corrective Action Plan on August 13, 2012, and for finding substantial inadequacies under California Code of Regulations, title 17, section 56054. The several defenses raised by the facility on appeal were considered. (Findings 6 through 10.) When all the documents in the record are considered, the facility has not established grounds for its appeal. For these reasons, SGPRC’s decision should be upheld, and the facility’s appeal must be dismissed.

ORDER

The appeal of Anthony Stallworth, Administrator on behalf of Family First Residential is DISMISSED.

DATED: March 4, 2013

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings